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without reserving the oil and gas. This conveyance was promptly put on record. Later the conveyance of the oil and gas to Preston G. Zinn was recorded. The plaintiff in this suit claims as the assignee of Preston G. Zinn, and alleges that the defendant had actual notice of the unrecorded deed to Preston G. Zinn. Both claimants leased the land to the Carter Oil Co. for oil and gas purposes by separate leases, each of which reserved a royalty to the lessor. The plaintiff brings this bill to determine the title to the one-eighth royalty. He asks that the defendant be compelled to pay over to him the amount already received, and surrender all future claims thereto, and alleges that defendant's deed is a cloud on his title to the gas and oil royalty, that other wells are about to be sunk, and that he will be put to a multiplicity of suits to maintain his rights, and that irreparable damage will be done. *Held*, that both the legal and equitable title merged in the oil company. The interest of the plaintiff is only a claim to the royalty, one-eighth of the oil product. This interest is personal property for which an action at law for damages will furnish an adequate remedy. A bill in equity does not lie to remove a cloud on or settle the title to personal property unless of peculiar value. The question of multiplicity of suits is not involved, and if it were the right should be first determined at law. The question of irreparable damage is not involved. The court of equity has no jurisdiction to determine this suit, the remedy at law being full, adequate and complete. *POFFENBARGER, J.* dissents on the ground that the remedy in law for damages is inadequate, because to assert it the plaintiff must give up his property. He has a right to the specific property itself, a share of the oil in the pipe line to be set apart to him in kind. The property cannot be identified, so the only remedy is the equitable one of partition. *Zinn v. Zinn* (1903), — W. Va. —, 46 S. E. Rep. 202.

The weight of authority both in West Virginia and elsewhere supports the decision of the court. Equity will not remove a cloud on or settle the title to personal property unless of peculiar value. *Zanhizer v. Helner*, 47 W. Va. 418, 35 S. E. Rep. 4; *White v. Stender*, 24 W. Va. 615, 49 Am. Rep. 283; *Baker v. Rinehard*, 11 W. Va. 238; 2 Rob. Pr. (old) 225; *Randolph v. Randolph*, 3 Munf. 99. Multiplicity of suits is not involved, if it were the right should be determined first at law. *HOGG'S EQUITY PRINCIPLES*, 350. As to irreparable damage, it has been held, that the wrongful extraction of oil from real estate is irreparable damage. *Bettman v. Harness*, 42 W. Va. 433, 26 S. E. Rep. 271, 36 L. R. A. 566, but in this case the wrongful extraction of oil is not involved. The right of the Carter Oil Co. to extract the oil is conceded by all parties. Judge *POFFENBARGER* bases his dissent upon the ground that an equitable action for the partition of the oil would lie. He relies upon *FREEMAN ON CO-TENANCY AND PARTITION*, Par. 448; and *Freeman* relies upon the three cases of *Weeks v. Weeks*, 5 Ired. Eq. 111; *Edwards v. Bennett*, 10 Ired. 361; and *Smith v. Dunn*, 27 Ala. 316. These are all suits for the partition of slaves. It must be borne in mind that slaves were presumed to have in the estimation of the owners a peculiar value unless the contrary appeared. *Randolph v. Randolph*, 6 Rand. 194. A master might become very much attached to his slaves and their loss to him would be beyond estimate in money damages. It does not appear that the courts have ever been asked to partition oil running through a pipe line. The remedy would hardly be practicable were the courts disposed to grant it.

JUDGMENTS—ABSENCE OF JURISDICTION—INJUNCTION—RESTRAINING EXECUTION.—Iowa statutes provide that the jurisdiction of justices is coex-

tensive with their respective counties; but does not embrace suits for the recovery of money against residents of other counties, except on written contracts stipulating for payment at a particular place suit may be brought in the township where the payment was agreed to be made. Plaintiff, a resident of Clarke County, gave an order for lightning rods to an agent for a firm doing business in Pottawattamie County. The rods were delivered and erected and plaintiff refused to pay for them. An assignee of the contract, the defendant in this suit, brought an action for the contract price before a justice of the peace in Pottawattamie County, exhibiting an instrument which, on its face, made the contract price payable at Council Bluffs in Pottawattamie County. Notice was served in Clarke County upon plaintiff, who failed to appear and judgment was rendered for the contract price, which was later transcribed to the district court. Thereupon an execution issued which was about to be levied upon plaintiff's property in Clarke County when this action was commenced in equity to enjoin the levy of the execution and to restrain the enforcement of the judgment on the ground that the provision of the contract that the purchase price was payable at Council Bluffs was in fact a forgery, and not in the contract at the time that plaintiff signed it. *Held*, the judgment rendered was not binding on plaintiff, and he could show by parol that the fact which apparently gave jurisdiction was untrue. *Cooley v. Barker* (1904), — Iowa —, 98 N. W. 289.

The court concludes that the record in the case before the court shows that plaintiff's contention is true. The substance of the ruling is as follows:— This provision alone gave the justice jurisdiction and without it he had no jurisdiction. A court which in fact has no jurisdiction can not, by deciding that it has, confer upon itself the right to adjudicate a controversy. As to the contention of the defendant, that the justice was required to determine the matter before rendering judgment and his finding is conclusive, as no jurisdiction in fact existed the judgment is subject to attack whenever and wherever the question arises. Plaintiff, ignorant of the forgery and knowing that the court was without jurisdiction, might very well have given no attention to the notice served upon him. If the justice had jurisdiction and plaintiff was relying simply on his defense of alteration of the instrument, a different question would be presented. In such a case, on failure to make his defense before the justice, he would be concluded by the judgment,—an illustration between a right decision and the right to decide. As authority for its conclusions the court cites *Gregory v. Howell* (Iowa), 91 N. W. 778; *Porter v. Welsh* (Iowa), 90 N. W. 582; *Hamilton v. Millhouse*, 46 Iowa 74. For cases similar, see *People's Savings Bank v. Wilcox*, 15 R. I. 258; *Scott v. McNeil*, 154 U. S. 34, *Mechem's Cases on the Law of Succession*, p. 126. This case does not come under the head of collateral actions, for actions in equity for relief from judgments, though indirect in a way, are not collateral. In such cases the question to be determined is whether the adjudication was not procured by fraud, mistake, or accident. See *Eichhoff v. Eichhoff*, 107 Cal. 42; *Phillips v. Negley*, 117 U. S. 665; BLACK ON JUDGMENTS, sect. 376 et seq; FREEMAN ON JUDGMENTS, sect. 486.

MASTER AND SERVANT—FALSE IMPRISONMENT—DUTY OF MERCHANT TO CUSTOMERS.—S was employed as a floorwalker in the defendant's store, his duties being to prevent wrongful acts by customers, retake stolen goods, and call the police to arrest thieves. The plaintiff, having made some purchases, left the store. While on the sidewalk in front of the store, she was stopped by S, who accused her of stealing goods. She was taken down stairs into a room and searched for stolen goods by S. In an action against the defendant